IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.81/2006

Decided on.12.7.2007

Des Raj **…Petitioner.**

Versus

State of H.P. and others **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : **Mr. Dharamvir Sharma and D.S. Kainthla, Advocates.**

For the respondents **Mr. M.S. Chandel, Advocate General with Ms. Meenakashi Sharma, Dy. A.G. for respondents No. 1 to 3.**

Mr. Rajnish Maniktala, Advocate for respondents No. 4 & 5.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the National Hydroelectric Power Corporation had agreed to provide 700 jobs to the affected families whose land was acquired for the construction of Chamera Hydro Electric Project Stage-1. The Corporation had only provided employment to 508 families as per entries of Pariwar Register. Since 192 families were left out, they took up the matter with the State Government and consequently the Corporation had agreed to grant a financial package in lieu of employment to left out 192 effected families and for the identification of 192 eligible families, the Government constituted a High Power Committee. The High Power Committee further constituted a Sub-Committee in its meeting held on 24.7.2000 to identify 192 eligible families, which prepared the list of 192 eligible families on the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

basis of the applications furnished. The High Power Committee considered and finalized the list of 192 eligible families and decided in its meeting dated 18.11.2002 to grant financial package to 192 families. The persons, who were left out from the list of 192 eligible families of Chamera-1 Project, took up the matter with the State Government. The State Government constituted a High Power Committee to re-assess the package to be released to Chamera Hydro Electric Project Phase-1 oustees in lieu of employment and to identify their actual status vide notification dated 5.7.2003. The Committee in its meeting held on 19.7.2003 decided to re-examine/re-assess all the cases on the spot and to finalize the fresh list of 192 eligible families which was prepared after re-survey. The tentative list of 192 persons in which name of deceased Sobhia son of Sambhu (sons and daughters and name of his brother and Smt. Dumnu widow of Lokia) was figuring at Sr. No. 157. The draft list was prepared on 1.7.2004 and the opportunity was further provided to all the left out families. The petitioner had also filed his claim during the prescribed period i.e. 23.7.2004 for inclusion of his name in the list of 192 eligible families for financial package in lieu of employment. He had also attached the documents i.e. LAO certificate regarding his land, copy of pariwar register, copy of jamabandi alongwith affidavit to the effect that his land i.e. 1-3-19 bighas and 3-2-10 bighas of deceased Sobhia maternal uncle of petitioner had been acquired and the remaining land was mutated in his name through will. Consequently on the basis of the material furnished by the petitioner and copy of will, his name was accepted for inclusion in the list of 192 eligible persons against 4-6-9 bighas vide Sr. No. 109. The list of 192 eligible persons was finalized and the same was approved by the State Government for payment of financial package vide letter dated 28th September, 2004. Though the name of the petitioner was

included in the list but the amount as per financial package was not released in his favour.

Mr. Dharamvir Sharma, Advocate had strenuously argued that once the name of his client had been included in the list of 192 families, he was entitled to get the amount as per the financial package and the same could not be denied to his client only on the pretext that he had inherited the land from his maternal uncle by way of will.

The learned Advocate General had strenuously argued that since the land in question had been inherited by the petitioner through his maternal uncle on the basis of the will, he is not entitled to any money.

Mr. Rajnish Maniktala, Advocate had submitted that as far as his clients are concerned, a sum of Rs. 8.76 crore had already been paid to the State Government.

I have heard the parties and perused the record.

The position which emerges from the above stated facts is that the petitioner's name was included at Sr. No. 109 of the final list which was prepared after verifying all the facts. He had submitted the copy of LAO certificate regarding his land, copy of pariwar register, copy of jamabandi along with affidavit to the effect that his land i.e. 1-3-19 bighas and 3-2-10 bighas of the deceased, his maternal uncle Sobhia, had been acquired and the remaining land has been mutated in his name through will.

The name of the petitioner was deleted subsequently only on the ground that the rehabilitation package would not be payable to the deceased land owners who died issueless. The land of the petitioner measuring 1-3-19 bighas was acquired and the land of his maternal uncle measuring 3-2-10 bighas was also acquired. The financial package was prepared for the persons, whose land had been acquired for the construction of the Project. Sh. Sobhia was one of those persons whose

land had been acquired and he died in the year 1995 issueless and had made a valid will in favour of his nephew i.e. petitioner. The Corporation had deposited a sum of Rs. 8.76 crore on the basis of the list of 192 persons. The list was prepared by the Deputy Commissioner and RRO. The grounds mentioned for deleting the name of the petitioner was only that the issueless land owners will not be given any package. This ground is not sufficient to deny the benefits of financial package to the petitioner when the petitioner had inherited his uncle's land by way of registered will. The persons who died issueless, their heirs cannot be discriminated against. All the land owners whose land had been acquired whether having children or issueless form a homogenous class.

Consequently the decision of the authorities to delete the name of the petitioner from the final list is arbitrary thus violative of Article 14 of the Constitution of India.

Accordingly this writ petition is allowed. Respondents are directed to release the amount payable to the petitioner under financial package on the basis of the revised list whereby his name was figuring at Sr. No. 109 within a period of four weeks from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 12, 2007
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